(1)

Supreme Court, U.S.
FILED

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No.
OCTOBER TERM,2003

IN THE

# Supreme Court of the United States

*CLEMENT A.ST.HILAIRE*
*Petitioner*

*v.*

*JEFF BRYAN REMODELING INC.*
*Respondent*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF NEW HAMPSHIIRE, FIRST CIRCUIT**

## PETITION FOR WRIT OF CERTIORARI

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39 pp

## QUESTION PRESENTED

1.)WHETHER THE DEFENDANT DEFAULT ED BY THE LACK IN NOT PROVIDING A REPLY ON PRETRIAL, ORDER DENYING DUE PROCESS OF LAW, IN NOT ALLOWING A JURY TRIAL TO ANSWER THE PROPER QUESTION OF LAW IN CONTRACT, AFTER THREE PRETRIAL HEARING INVOLVING FRAUD WHEN THE NEWLY FOUND EVIDENCE BOND COLLECTED INDE - MNITY DEPRIVED OF LIBERTY FOR THE MALICIOUS DEFENDANT HAD VIOLATED PROFESSIONAL CODE OF N.H. BAR 3.3 (a) ?

2.)WHETHER THE CONSUMER PROTECTION ACT RS A 358'A-3 I APPLY TO THE REAL ESTATE PROFESSI- ON OR DOES THE PROFESSION FALL WITHIN THE STATUTORY EXEMTION, WHERE THE PENALTY OF LICENSE SUSPENSION, OR REVOCATION , MAY BE MORE SEVER THEN DOUBLE OR TREBLE DAMAGES AND THEIR CONSTITUTIONS A SUPERIOR DETERE- NENT TO A ALLEGED DECEPTION OR UNFAIR ACTI- ON RSA 331 A 29 (1995)

3.)WHETHER THE JUSTICE HAD ABUSE DISCRETION ALLOW ING A PARTIAL SUMMARY JUDGMENT ON FRAUD ON NOT [E]XHAUSTING THE REMEDIES FOR SCHEMES AGRIEVED CONSUMERS NOT QUALIFING FOR NOT HAVING ACQUIRED THE PROPERTY ?

4.)WHETHER THE ANTICIPATED FORFEITURE OFTHE NEGLIGENCE OF BREACH FOR NON PERFORMANCE RELIEF A VIOLATION OF THE VALID REAL ESTATE TRANSACTION AND CONTRACT LAW QUESTION FOR JURY TRIAL ON EQUITY JURISDICTION OF THE DEPOSIT OR WAS THE GENUINE ISSUE FACTS AND MATTERS THAT WAS AN ABUSE DISCRETION THAT IS CAPRIOUS, AND MISCARRIAGE OF JUSTICE ?

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# STATEMENT OF CASE

## The Pretrial Suppression Hearing

This is an Petition for a Writ of Certiorari, by Clement A.St. Hilaire, Petitioner, Broker, License in Real Estate, in State of New Hampshire. The Appeal of Final "Pretrial" Order of a conference that was held on March 24, 2003.

The conference wasn't taken by Court Recorded unknow the Plaintiff's that it was the Final Hearing The Presiding justice Kenneth R.McHugh,in his Theories, erroneous conclusion,The Judge over-looked of facts that gravity of the unprofessional, misconduct of the Counselor De-faulting in Perjury, The Defendant'sCounselor,when it stated;("The Counter Claim"was "Prohaylaptic"as a retaliation")at the conference,The Justice Philip Holman J.ordered a Statement; "failure to state claim" where his order tookplace prior SupremeCourtAppeal order. That was Appealled. for and because of a Timely issues, of 30 days.The Supreme Court orded Stated: "Interlocutory" "without prejudice"of the well pleaded matter, and contradictory, to the agrument of failure that havin't stated a claim. "Pendentelite"for futher procedings, to the Jury trial, partial-final judgment,Why wasn't the Jury trial continue futher proceedings. The Justice Keneth McHugh, Erronously dimissed, with error the pre-trial hearing by over looking partial- trial, as a Final order The Petitioner had filed a Review the order but the Motion was to dismissed on April 7, 2003,Petitioner also filed on March 3, 2003, Motion for relief from Judgment, by Justice Phillip Holman J. for the defendant's fraudulent of knowledge and frivilous,with U.S. Rule 60 (b) newly discove red evidence,of after they have been fully Imdemnitified,the the surety of the Bond, which was collected on Dec. 6, 2001 in their concealment an without their discloser the was prior was prior to January 7, 2002 hearing.The Motion was dismis sed on April 7,2003.

The Defendant's concealment, at the January 7, 2002 hearing before Justice Holman contribited to futher abuse of process, which resulted the "Summary Judgment"Particially finalized hearing that left a Jury Trial for the defendant only. The Defendant's failure in his Consumation of the Sale, that restricts restrictsthe damages, and the blurred effect by Defendant's in continued negotiation of letters, that were never agreed on by the owner,That theBroker was not privy to the letter form The owner insisted 5,000 in crease monthly,that a typed and

and handed the purchaser in letter of negotiation on June 20, 2000, that proves the owner, was not with the Counselor in their argeement, that was not with all parties, to the original Contract involved. Their Document, but was their Abuse of Process, erronously claiming of their relief sought Allegation of Three times the deposit, in Consumer Protection, that was never viable, of lack of Conveyence, that never took place in his Failure of the Consumation of the Contract The Review discretionary was Declined of that Appeal, was asked for a review of the New Hamshire Supreme Court Reconsideration is denied on July 24, 2003, Appendix copy attached.

## JURISDICTION STATEMENT

The Judgment of the New Hampshire Supreme Court of Appeals eas entered Plaintiff's Motion for Reconsideration Denied. on the Case No. 2003-0239, on July 24, 2003. This Petition is filed within ninety days of that date. This Court's Jurisdiction is invoked under 28 U.S. C. § 1257.

## CONSTITUTIONAL PROVISIONS INVOLVED

### UNITED STATES CONSTITUTION, FOURTH AMENDMENT

To Repeal or alter any act.giving Chancery Court jurisdiction Constitution, vesting Equity Jurisdiction previously exercised by judges, of common pleas Court, in chancellons was adopted as othewise all Courts could be practically abolished, by action of one Legilature in conflict with provisions, concerving methods of amending constitution.And provision there of that every man shall have remedy by due course of Law with in the Constitution Act 1-9 Const. Art.4-17

### UNITED STATE CONSTITUTION OF EVIDENCE

The Rules of Evidence to sopport the Trial Court's Contention that the obsence of jury permits The Admission of statement"These rules apply generally to all Civil Procedings unl ess otherwise by the Constitution or Statutes of the State of New Hampshire or these rules"(emphases added) As such the rule against hear say mandaties that the Testimonney is inadmissible.

### UNITED STATE CONSTITUTION JURY TRIAL

The Jury Trial would have given the Petitioner the rights to Due Process and confrontation Law 298(1) cross -Examina tion of Evidence at law in Contract Article 1, 6, and 21, Article VI, and Article XIV.

*STANDING'S TO APPEAL AND LEGAL AUTORITIES*

on pleas Court,in a Chancellons was adopted as other wise All Courts could be practically abolished, by action of one Legislature, in conflict with provisions, Concerving methods Amending Amend innstitution. And provision,of that every man shall have remedy by Due Course of Law Constitution Act.1-9 Const. Art.4- 17 Miscarriage of Justice, that exceed the clean Hands Equity Andis v. Schick Dry Shaver Inc. No. 6303 (94 F 2d 271 7th Circuit parrellel to Court Key 351.50 (J.Alexander Maine)Jury Trial existing Quasi Judicial Manner Judicial Review Lyons Case presented,The Superior Court Errored by not having seen the Jurisdiction that decided this Case wasArbitrary and Capricious review offered an "Complete Remedy" Colby v. York County 442A 2d 54 Me. Me.1982.)

The Petitioner, Appellant Clement A.St.Hilaire, In Request Motion for Appeal.The Appellant Presents,The Federal Law on Information of the Right to a Fair Trial and proper Litiga tion Act 5 U.S.C. (552 (b) (7). The State New Hampshire to what Authorities that have provided a case at hand, reason for the dismissal R.S.A. ( 541-A:1 I ) R.S.A.. 91The Right to know Law. Ch 10 § 10.45(Doc. 01-SC-941 Under the Newly discovered evidence pursuant to ( N.H. R.S.A. 514:9 pursua nt to Rules Civil Procedure Rule 60 (b) (3) Federal Rules of Civil Proc 28 U.S.C.A. To Repeal or Alter any act. of giving Chancery Court Jurisdiction 1792 .Constitution, vesting in Equity Jurisdiction previously exercised by Judges.

**This Standard of Review is "Narrow and Highly defe rential"**In re Rayan Co.142 N.H.643, 645,(1998) Reasonable and Sustainable on the Record. our Standard of 1997) See; Appeal of Leonard 147 N.H. 590, 594, (2000)"Accordingly we will reverse the Agency only if made an Error of Law,or or we are satisfied by a clear preponderance of the evidence, evidence,that the agency'order was unjust ,or unreasonable" Id. review on Appeal is governed by RSA.541:13(19 In order to address the issue the Petitioner has raised an Appeal we must first decide whether theTrial Court properly dismissed the Appeal. See: Sec.2d James W.Moore et al Moore Federal Practice § 301.13 ( 3d -ed 2002)

¶(1. st ISSUE Denial of Jury Trial, with Prejudice;Pretrial Trial was a Conference preliminary Hearing Rule 12 (b) §373

Of C.J.S. 35 B § 923 Page 260 § infra § 1202 Not a Trial on Merits § 906 C.J.S.35 B Not designed to take the Place of Regular Trial, Not intented to resolve those issues see; James on v. Penn.Salt MaFG.Comp. D.C. Pa.22 F.R.D.238 Pre-Trial Procedure Conference Key 623.1Vt2001 In General to Granta Motion to dismiss for failure to State Claim The Trial Court must find that it appears beyond doubt there no Exist form of facts or circumstances that would entitle the Plaintiff to any Relief Rules Civ. P. Rule 12(b)(c) Blaim v. Friedman 782 A 2d1204 Contract N.H. 2001 Coyles v.Bettles RSA.508:4 (782 A 2d 902)The Jury Trial would have given the Petitioner rights to Due Process and Confrontation Law 298 (1) Cross Examination of Evidence at Law in Contracts See:Public Utilities Commission v. Cole's Express (138 A 2d 466) U.S.Constitution Article 1, & 6, and 21 denied a Fair Hearing Right Under Article VI, Article XIV th Amendment of the Constitution.Forman v. Davis Supra note 64. Carter v. CamBell 285 F 2d 68 relief under Rule 60 (b) Thompson and Wolfsohn, Clement A St.Hilaire request of Courts to Vacate a Judgment Order of Justice Holman J. (Doc. 01-Sc-941Under the Newly discovered Evidence pursuant to N.H. RSA. 514:9 Pursuant to Rule of Civil Procedure Rule 60 (b) (3) Federal Rules Civil Proc. 28 U.S. C.A. v. Frisk 675 F 2d 1079 3ed Law Rep. 884 (9th Cir 1982 1982) Spitzer -Rorick Trust & Saving Bank v.Thompson (107 Fla. 752 ) 143 SO. 865 1932). **Default of the Pretrial Order: By the Defendant,"** Failure in not Filing Pre-trial Statement on or before the Above date will result in the order of the Court on a written Motion for good cause En try of a nonsuit default, or such other order as Justice may require.No changes in the above Preliminary Pretrial Discovery Schedule will be permitted except by Shown. Failure of the Defendant to seek with reasonable diligences Extensions of deadlines set by or- der Fed. Rules Civ.Proc. 60 (28)(1)28 U.S.-Hannah v. Road Way Exp. Inc. (200 F.R.D. 651). **Default;** The Plaintiff's had Docket the case [in] the District Court the Defendant's removed to the Superior at Their own expenses and Initiative Motion Chapter 33 § 1115) Equitable Proceedings The Petitioner next arguements judge over came the Presumption of Revocation,the Jury trial at Evidentary he aring. Where it was plainly erroneous,reasonably efforts were not made statements for pretrial RSA.567 A:4 (1997) How ever, because the Trial Court used an incorrect Standard of

Legal improper admited hearsay evidence, andidn't consider certain Testimony, we reverse an remand See; In re Estate of Crame 129 N.H. 544 548, (1987).**Nor can we find any Authority** in our case Law or our Rules of Evidence to support the Trial Court contention that the obsence of jury permits the Admission of this Statement.See: New Hampshire R. Ev. 1101 (b) These rules apply generally to all Civil Proceedings unless otherwise by the Constitution or Statute of the State of New Hampshire or these rules emphases added Such the rule against hearsay mandaties That the Testimoney about Reyes Statement in admissible See:N.H.R.E. Ev. 802.

**Count 1;** Rules of Civil Procedure of Professional Conduct Rule 3.1Meritorious Claims an Contentions of Frivolous intent and failed in the lack of good faith Rule3.4(a) unlawfully, to Conceal Document potential evidence (b)Falsify and Test ify falsely to the inducement and obstruction of The Justice. "Whether reasonable attorney" that would have been done, under similar circumstances R.E.Mallen & J.M.Smith, Legal Malpractice § 33.15 at 333(4th ed.1996). (At Bar the Defendant continued position that atthe Trial without informing. The Justice Holman J. LEGAL MALPRACTICE; THE LAW OFFICE GUIDE TO PURCHASING INSURANCE § 5.14 AT 3(That they as Defendant had no issue or case standing)

¶ (2.ed.**ISSUE** Consumer Protection Act,"Consumation" When they had collected the Bond on the Deposit in Decem ber 6, 2001 prior to the Hearing of January 2002 of no outstnding claim of Issues but a breach of Professional duty,to the Court System. ( R.E. MALLEN ED. 2D ED.19976, N.H. BAR RULE 3.3) (a) (3.) Professional Code"Prohibits a Law yer from"knowingly... Mak{ing} a false Statements of Material facts or Law for Tribunal.and Rule 3.3 (a) (3) Prohibits, "Knowningly offer{ing} Evidence to the Lawyer knows being false"Bruzga's Case 145 N.H.page67The defendants Counsel knew That the Sale wasn't Completed like the case below; Similarly Isolated sales (uncompleted) property of Broker. The Comsumer Protection Act.The Purpose of the Act" is to ensure an Equitable relationship Between consumers and per son engaged in business " McGrath v. Mishira. 434 N.E. 2d 1215, 1222, (Mass. 1982). Ch. 31 § 1044 A Summary Judgment Reconsideration of prior decision; There misrepresenta tion of the Relief sought from Defendant Counsel of the Mis

Conduct fraud, as an adverse Counsel.7.(Aetna Cas.8 sir Co Co. v. Cunnigham, 224 F 2d 478,69 A.L.R. 2d 696 (5 th Cir Cir. 1955 ) The Main Point of issue under newly discovered Evidence is facts of the Document By their reciept Deposit on December 6, 2001 ,While still pursuing that Court action after having and in violation of the State Statutes.

**Count II;**That the Attorney Karen Oliver,and Timothy Pheonix Esq. Both had Violated, the State Statutes of The New Hampshire Real Estate Code of Professional Ethic.13 N.H.P. Local Goverment Law § 945 The Chapter Being 331 A :14 Bond.TheLaw States:(The Bond shall be Payable to the State of N.H.for benefits of any persons Agrieved and Surety All person shall innoevent exceed the Sum, the BondAmount The Counsel for the Defendant had Recieved Bond Compensation from Hanover Ins. Co.December 6, 2001.

**74 Am Jur 2d Suretyship § 141**

In other words a Surety who discharges the obligation Question is the Subsequent Surety who by the Terms the Contract is reponsible only in case the"Proven May Look to principal for Reinbursments,"Whether the final action"of a Default of the Principal See;U.S.v.Fisk 675F 2d 1079 3ed. Rep. 884(9th Cir.1982).Spitzer Rorick Trust & Saving Bank v. Thompson 107 Fla. 752 143 S.O. 865 ( 1932)**"Exoneration was of no Concern:** to The Defendant's Counsel of The Plaintiff's Deb tor of Bonds Surety have satified the obligation, See; Restatement of Surety § 112 (1941). However on date December 19, 2001,The Defendant's Counsel still had chosen in pursu ant their Motion of Counter Claim and Continued request of Damages as Alledged aggrieved.D.C.Mayfair extension Inc. v. Magee 241 F 2d 453, 100 U.S.App. D.C.48. Supra. 28 US. C.A.Rule 60 (b) **Newly discovered Evidence.** D.C. Ramsey v. Curtis Supra. §1233) Mertorious defense the action which the Judgment was enter U.S. Assmann v. Fleming, C.C.A. Neb. ( 159 F. 2d 332. 35 B C.J.S. 1248) The Misrepresentation to the Court of Fraud Stating to the Court In Motion Stat ing that the Defendant continually Agrieved on Their motion Presented Dec.19,2001,as No.01SC.941.and Pursuant of the Defendant escrow of the 5,000 dollars,This is Double dipping, and That Friviously action against St.Hilaire alledging that they Filed Continuiously as a Counter Claim under Doc Trespass an Conversion.The Misrepresentation to the Court as fraud on the Court Motion continued on Dec. 19, 2001,

Defendants Motion under Doc. No. 01-SC.-0941. Pre-Trial Statement pursuant to Rules of Civil procedure under Rule 62. The Plaintiff has submitted a preliminary pre-trial disc- overy Stateement under Rule 62 Materials were due by Jan. 3, 2003 and on January 1, 2003.The Following brief,form er Motion was with History,of all that procedures Plaintiff's full response. Defendant has not complied in any form, with the Plaintiff, defendant's in default,Justice Structuring Confe rence Order their Laches in timelyness his Default of March7 2003 Being the Defendant Dead line of the PretrialStatement Due SeeUnited Sec.Inc.Co. v. Commissioner of ins. 348 N.W. 34,35, (Mich.Ct.App.1984)."In contrast to damages, Equita-ble, Rescission, and Restitution as a complete Remedy which Restores the injured party back to position prior to the trans action."Patch v. Arsenault, 139 N.H. 313,318,(1995).Conse-quently,the Trial Court should grant only"when in all the Cir cumstance it appears right and just to the parties do so. Id (quotation omitted.) We review the trial Court's order of Res cission under our usustainable exercise discretion standard. See;Gordon v. Tafe 121 N.H. 250, 252, (1981); cf. State v. Lambert 147 N.H. 295,296, (2001)(Explaining unsustainable exercise of the.

**DEFENDANT WAS IN PURSUANT OF EARNEST** *MONEY DEPOSIT ALREADY COLLECTED ON* December 6,2001 The Conversion Statutes; Ambiguous two sets of concepts, a.)The Taking of Funds, b.) charged but not in possesion,of the earnest deposit of fundsQuestion of Law see;Alex Popoy v.Patrick Hayashi No400545 C.A. Superior 306, Dec. 18, 2002 also, Kramer v. United States 408 F 2d 837,(C.A. 8th 1969), State v.Strutt (1967) 236 A 2d 357,359 Egrayrons and bad in faith; was when they filed there Brief on Jan. 7, 2002 anded to your court Justice P.Holman J. on February 8, 2001and Court Hearing they had Purge them se-lves with Fraud with injury mistated that they didn't have the Deposit. Karen Oliver Esq. was erroneously, had falsely stated the Main Issue of the case in point, fraudulent to have defended her Counter Claim, in bad faith. ( She never made any Statement to the Court or the Plaintiff's was made aw-are,of the check copy on Dec. 6, 2002 payment.N.H.Practic-es. **Chapter 59 § 59.1** Such order Injustice would establis ded Judgment was results of Fraud: Reed v.Prescott 70 N.H. 88 (46 A 457,(1899),seeTown of Bedford v .Brooks121N.H.

262 428 A 2d 897(1981), 514:9 & 10.Chapter 58 of the N.H. the N.H. Real Estate Practice: other forms of Relief at: In re Irene 212 N.H. 123, 427 A 2d 24 (1981), **Mistaken Facts § 514:9** "A Sitution, in which regards of one duty, tends to disregard of another"See: U.S. v. Miller C.A. Mass. 463 F 2d 600,602 Mislead action or passive Representations other Conduct See:Boyen v.Hill 85 N.E.413, 198 Mass 477 (1908 Me. Bibber v.Carville 63 A.303, 101Me.59 (1905) Corbin on Contract Mistake ch. 28 § 611page 698. **74 Am. Jur. 2d Surety § 145 page129** Right of Indemnity Contracts respect of responsibility Surety Remedy at Law, or in Equity.Indemnify only against established Loss or until such Loss,occures. 5 Corbin on Contracts 3 § 990."Whether there were sufficient facts, establishing proof of Damages at with reasonable certainty"American Law Reports,117A.L.R. 1091: Henderson Acheit Lithograhic Co. v. John Shillito Co. 64 OhioSt.236 60 N.E. 295 (1901).The Indemnification agreements as well a claim of Fraud.Inducing the Plaintiff's bond as the surety. **A Judgment Either Claim would be in the same Amount, and Payment of the Judgment who would Bar:** Claims seperate and distinct, in their origin 7.) Actna Cas, 8 Sir Co. v. Cunningham. 224 F 2d 478, 69 A.L.R. 2d 696 (5th Cir. 1955) Relief is sought under Fed Rule 60 (b) (3) On the grounds that Judgment Procured by Fraud or other Misc onduct, the Motion must be filed not more than one year after the entry of that Judgment entered. See: D.C. Mayfair Extension Inc. v. Magee, 241 F 2d 453 100 U.S. App. D.C. 48. Supra. 28 U.S.C.A. Rule 60 (b).**Newly discovered Evidence:** D.C. Ramsey v. Curtis Supra § 1233 Mertorious defense to the action in which the Judgment was entered.U.S.Assanann v. Fleming, C.C.A. Neb. 159 F 2d 332.35 **B C.J.S. § 1248.** A party adversely affected is given opportunity to be heard on that question infra § 1251. In Cases.

**¶ (3ed.) ISSUE** Summary Judgment on Fraudulent Reason, Presented by defenc nts Counselor" **Summary Judgment". Key 56 (c) " Interlogatory Ruling"** Summary Judgment,Interlogatory in Character, may be rendered on the issue of Liability alone although there "genuine"issue as the Amount of Damages."We File a Motion for Reconsideration to have E}xhauste the Remedies, make the case final, before Appeal. **Federal Civil Procedures 2492: PARTIAL**

**SUMMARYJUDGMENT KEY 2557** N. D. Cal. 2001 action of a **set-off** by Defendant's Counsel Whom filed a Motion for Damages of a Counter Claim Of Kramer v.United States 408 F 2d 837, 840, (C.A. 8th) 1969. unlike an order granting Judgment Interlogatory Nature and does not terminate action of Claim for relief in a Jury Trial of the Defendant Fed. Rules Civ. Proc Rule 54 (b) 28 U.S.C.A. Persistence Software Inc.v. Object People Inc. (200 F.R.D. 626.) "Reversal Summary Judgment Motion is Warranted where, review, a Material issue of Facts or Inaccurate Interpretation ,of Law that exist."
**Due Process on Summary Proceedings"** See: Nathews v. Eldridge 424 U.S. 319, 331, 335, ( 1976 ) The Defendant Attorney Stated; **"Sua-sponte"** ***"Judgment Key 185 (2)"*** Summary Judgment" Trial Court must consider evidence in light most favorable to non movant, entitles him to Trial by Jury"Rules Civ. Proc. Rule 56 (c) G.S. § 1 A-1 In re Estate Hoover 155 Ill. 2d 402-410, 411, 185 Ill. Dec. 8,66, 615 N.E. 2d 736, 739, (1993).( At Bar Evidence newly Found a Fraud intent to collect the Deposit as Attorney Compensation of The Fees) see:Zoellar v. Augustine 271 Ill. App. 3d 370,374 208 Ill. Dec. 17 648 N.E. 2d 939. 942, (1995) The Lack of sufficiency of the record before it. We can not uphold that trial court decision unless it is not supported by the evidence or is legally erroneous Peabody v. Town of Windham 142 N.H. 488, 492, (1997) Ultimate facts 41 Am Jur 1st P I § 7.N H. Practice Chapter 7 § 7.27 The Split cause of action Justice where the Summary Judgment is quick solution of to problem See; George H. Cox v English American Underwriter, 245 F 2d 330 Federa Civil Proced246 **Contract Law,are Question for a JuryTrial Key176 (2)**G.A.App.1984 Evidence sufficient to Support Trial Courts Findings, of Breach of Contract of Malicious Prosecution,and wrongfull interference with Real Property See; Fiske v. Ramey ( 318 S.E. 2d 26 171 G.AApp App. 210 M.A.Ronson v. Schroeder 140 N.H. 359 Conspira tor of Malicious Prosecution, Impro per purpose in the use of Legal Process created the false defense against Constitute. **Control § 674**already does for False Claim promote Remedy Remedy for the Misconduct and Recognize New Trial action by a Jury Trial. Id. at 597, 370, 374, 208 Ill. Dec. 17, 648 N.E. 2d 939, 942, (1995).( The lack of sufficiency of record 98, 503 A 2d 1387, 1388, Restatement ( Second) of **Torts § 681 -(1877).** 26 USCS. § 1222, n 10 Cancellation Contract.

by PreTrial 1981 Loss from Cancellation future forward Con tract is ordinary since cancellation Contract doesn't not invo lve or exchange. See; Wolff Commissioner 1998 CA.2 )148 F 3d 186, 98-2USTC. P.50526, AFTR 2d 5145. Breach of Con tract See; McFerran v. Heroux etal; 32300, 269 P. 2d 815 To Preserve the Jury Trial upon the Legal issues See; US. Beacon Theathers v. Westover Supra. Brokman v. Hollzer C.C. A.9 152 F 2d 730 case at Bar The "Equitable," determined by Law Court. That the defendant was negligent in his failu- re diligently pursuing with effort in fulfilling his duty of good Faith under Contract in seeking for" Permit"from the Town's Stratham N.H. as Entry Access to the Property. Bryan had concealed his knowledge that Surveyor telling him he alledge dly had only 23' feet of the entry right of (Public Roadway) was evident from his surveyor's brought to him on April 4, 2000.**II Statute Key 239 Judgment Key 181 (7).** William v. Blakely 757 P2d 186 ( Idaho 1987).Lynden v. Goldberg 260 Or. 301 409 P2d 191 (1971). **Standards of Comparris on C.A. Surveyor Page 65**Dow and Hodges Surveyed an Maps all over Portsmouth N.H. and Stratham New Hampton N.H. see; Yellowstone Basin Properties Inc. Burgess 255 Mont. 341, 350, 843 P. 2d 341, 347, (1992) Justice Holman J. had made **Partial Summary Judgment**

Their Attorney Firm. Therefore that Defendant's suffered no Damages as to Consumer Nature, nor Trespass, oppr essing Justice added cost to the System whom rejoiced in addminist as Partical Summary Judgement of the Denial of a Jury Trial that has prevented the True Facts Contract of Law Language in Rights. Other than the instilled Summary Judgment, and the Controversy still stands Partial,form Jury trial for the De fendant as to falsification of Miscarrige of Justice Consumer Fraud,The was no Consumation,known by Justice that never taken Place, an the Contraversy Still existing rights on law Contract The Defendant Equity Claim action,that provided the support of Fees to Court to the Superior. as Suffered in a Broker denied of Contract Law, that was District Court to have heard Proper jurisdiction before a Jury all the Facts needed Holman J. Decision has taken an abuse of Prejudice, of a Partcial Deneid the Plaintiff, supported a Jury Trial on False Base Concept **"An extreme remedy which should be cautiously invoked."**Rule 56 (e)The obligation Imposes upon ; the opponent of the Motion ] to come forward with

Affidavits( at Bar Karen Defendants Counselor has never Presented any form Affidavit) or other materials setting for the by competent proof specific facts that would be admissble in evidence to show...a genuine issue of fact exist. See; Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp. 475 US. 574, 586, (1986) Timothy Phoenix Esq. whom comenced the case an Promoted the Counter Claim,After three, Pretrial reviews demanding Damages for the Deposit had Previously Collected of the indemnity on Dec. 6,2001 $5,000.00 Dollars The Conduct of the Defendants Conselor of her Failure innot bring an Attention Justice Holman J.prior to Januasry 7, 2002 Hearing See; US. Kruger v.Reanick 197 F 2d 348 39 C.C. Pa. Patent 994 WN.ProtorCo.Co. v. US. 40 C.C. Pa. Customs 33. Torts § 674 (1976) Waiver his Privilage. Deferred the Jury Trial a Justice granted essential of De-novo Real Again See; McClaim v. Walker 478 S.E. 2d 670 (1996) In Breach of their Contract as Defendant Judgment of Partial.
"Elimates Suprise reduce expenses and Delays"See:Institutionnal Drug. v. Wankinch C.A. 9. 249 F2d 566The Counter Claim See: MaCarty v. M.&M.Transp. Corp.D.C. Mac.5 Fr.D D. 290 To Obviate a Full Trial.Under Equity Suit.US. Walch Walch v. De-Itrick D.C. Mass. 22 F Supp. 377 35 B. C.J.S. Fed. § 917 Rule 42 (b).To Estop further US. Mom an v. Paramount D.C.Mass. 6 F 2d 222. Whether the Equitable avoid Prejudice Dellefield v.Blockdell RealtyCom p.D.C.NY. 1 F.R. D. 357 Elkins v. Nobel D.C. NY.1F.R.D.357.New Hampshire Law of Anticipated Liquidated Damages as a result Breach (2). their was an intent on the parties to liquidate advance. (3 The Amount was aproportionate, stipulated reasonable. Made of Essence in the original Contract, and made essence by the parties 'Subsequent Conduct, See: Shullo Constrution Co. v. Miller 207 N.E. 2d 393, 395,-96, ( Ohio App. (1965) English Speaking Union (New York) v. Payson 174 N.Y.S. 2d 775, 779, (1958). Defendant properly retained the entire deposit as Liquidated Damages, (as to the case at Bar). The case at bar is parrallel to Erin food Ser- vice Inc. v. Derry Motel Inc. 131 N.H. 353, 356, Breached the Contract in his Failure to have obtain Approval within a reasonableTime.
"Special exemption Municipal Zoning (At Bar the Negligence of purchaser, whom failed to applying to the town for Stratham, N.H.the Contract Contingent condition Jeff, That Failed to comply The Land had 50ft right of entry Easement

The same **no more no less rights** owner has as he could transfer in deed.) "The Property was an Industrial develpoment" but not at every any location there without restriction or conditions being imposed on such use, See; Piscitelli v. Township Committee of Scotch Plains Tp,. 103 N.J. Super 589, 248 A 2d 274, 27, a Special property to use Regulations expressly, Permit unconditionly Specified Zoning regulation WATR. Inc. Zoning Bd. of Appeals of Town of Bethany, 158 Conn. 196, 257 A 2d 818, 821, Such use also know as Conditional use, See: Special Permit Compare Variance. Black Law; Six th. edtion.

¶ **(4.) Issue Rescission is an Equitable remedy,** At Bar The Plaintiff, Appealent was acting in a Fiduciary Relation when During the Contract essence of time and within the Contract until their was a default on April 24, 2000 non performance. The Forfeiture wasantisipated not a supprise,Jeff had Survey in hand when he had asked for the"ten day" extention after three extention inTime so he knew thatTime was of essesnce. When the Rescission he requested by Jeff Bryan was in late July of 2000 relation with the owner was turminated in time ofthis particular Contract. Malicious Prosecution, An where it deprived Liberty as the case at Bar: ( License of a Broker.) allegation of Substantial Interference that in Prior proceding terminated in Plaintiff's favor on the Merits as not doing as required Rules of Civil Procedure, Rule 12 (b)(6) G.S. § 1 A 1 see; Stanback v. Stanback 254 S.E. 2d 611, 297 N.C. 181. Underwood Elliott Fisher Co. v. Evans, 186 S.E. 858, 53 Ga. App. 673. (1936). Plaintiff under conditional sale Contract Dismissed by the seller **held sufficient to have stated cause of action** as against general demurred.Appealant was acting in a Fiduciary Relation During the Contract Default on April 24, 2000 the none performance **3 Am. Jur. 2d § 19 3 A Corbin Contract § 611- (1960). Never** enforce in equity unless the right to is so clear as to permit no deniel. [2]same Equity the Substanctial Justice Rescission the vendor **Period of Grace",** Where, under the particular facts of a case, Strick enforc ement of a forfeiture provision in and executory Real Estate Contract has violation to the Principal, of substantial Justice between the parties,the Courts will relieve party from Default in such payment. RSA. 507:7d. (Supp. 1986,) that "Rescision an equitable remedy the the granting of which is

Always a matter within that sound discretion of the Trial Court, depending upon the circumstance of each prticular case "Derouin v. Granite State Realty, Inc. 12 N.H. 145, 147 (1983) The Negligence of the Purchaser failure to make good faith reason able efforts of Acquiing a Permit "Right of Way"as a condition of the Contract.The boundries Surve yor the property is beyond the Statute of Linitation at law the Doctrine of Estoppel.Surveyed(1940) by (Dow andHod ge).The Marin Way Esasement of 50 Ft.is ClassV the public road Metropolitan Life Insurance Company v. San Franci sion Bank (1943) 58Cal.App. 2d 528, 534, Wilkin Supra at 617 Equit- able Division and the Law of Finders.(1983)Ford Ham Law Review, Professor R.H. Helmholz. (1339) the non none perform ance **See; 3 Am. Jur. 2d § 19 3 A Corbin Contract § 611 (1960).** good faith reasonable efforts from Acquiring a Permit contingent "Right of Way" Rule12, (b) (6) G.S. § 1 A-1 See: Stanback v. Stanba ck 254 S.E. 2d 611, 297 N.C. 181. Underwood Elliott Fisher Co. v. Even 186 S.E. 858, 53 Ga. App. 673, (1936).PlaintiffConditional sale contract,dismissed the Seller **held sufficient to have Stated a cause action as against general demurrer.The Contract no Longer in Effect How ever,Forfeitures are not favored in Law and dare Appellant was acting in a Fiduciary relat ion during the Contract essenceaTime,within theContract until their Breach and a Default on April 24, 2000.**
R.H.He lmholz. (1939). The Purchaser Jeff Bryan the Contr acted the Property and related "access of way"State Form forming Cloud in the Title, was purchasing with a right of Access North Hampton N.H. Route 26 in the 9 acres of the 12total Acres plot,within Conveyance of the Warrarty Deed Deed"was a strip of land of ten feet wide leading to North side the same rights as the owner had the rights to pass and repass in the North Hampton line over the right of way***(was surveyed in 1940 by Dow and Hodge Surveyers, where the question was provided a Survey as an Opinion not a Gaurantee.But lack reliable Measurmeents or Memories " as in a Deed produced Dow and Hudgeas local people Town Maps Respect as promenent, Survey er that Provided the correct meets as point of Bench Mark Standards.)*** That to should have been repected by Jeff Surveyor but means of depleting The Contract, otherwise why was Jeff trying to Purchaser an other small lot from the Abutter. We Reviewed De -novo

case at bar "See; Flamagan v. Prudhomme 138 N.H. 561, 565, 644 A 2d 51,55, (1994) Greenan v. Lobban 143 N.H. 18 (1998) Building Permit of Entry Sechest v. Safio l419 N.E.2d 1384, 383 Mass.568(1981) A Pro-se Complaint will not be dismissed just because it is not Artfully Drafted. See; Melton v. Personal Commission 119 N.H. 272 RSA. 491; A Sub. d. 4, 24 Am. Jur. 2d 16 Attorney Fees G.A.1985 attorney Fees and other expenses incured in defending Law suits based on Malicious use of Process are not recoverable Special Damages See; Traver v. Wills 330 S.E. 2d 896. 174 G.A. App. 550 G.A.Attorney Fees for Defending. Against an Actionare not available in Subsequent Suit Brought by Defendant s for Malicious of Process O.CG. A. § 13- 6 - 11 Easley v Clement 376 S.E. 2d 860 259 G.A. 10007 on remand 383 S.E. 2d 907 G.A. App. 494. ¶ 4024 Forfeiture of deposit or downpayment where a buyer later defaults, on his obligation, also retains the property 34 Am Jur 2d ¶ 4024.

**¶ Restatement (Second) of Judgments § 26 (1) (c) Res-judicata was assumptions Judgment ch. 6, Introductory Note at 263 (1982) Justice Holman J. order was an Abuse of Discretion of the Statute.**

see; also id. § 25 cmt.f; accord 18 Charles A. Wright, Arthur R. Miller & Edward H. Cooper. Federal Practice and Procedure § 4412, at 285 (2d ed. 2002).

> The general rule of § 24 is largely predicated on the assumption that the jurisdiction in which the first judgment was rendered was one which put no formal barriers in the way of a litigatant's presenting to a court in one action the entire claim including any theories of recovery or demands for relief that might have been available to him under applicable law. When such formal barriers in fact existed and were operrative against a plaintiff in the first action, it is unfair to preclude him from a second action in which he can present those phases of the claim which he was sisabled from presenting in the first action.

The Presiding Justice was prejudice against Plain-Tiff because of the Plaintiff was a"Pro-se" he could not see the Fruit of labor of a Broker taken advantage of.

## CONCLUSION

**FOR THE FORGOING REASON STATED ABOVE, THIS COURT SHOULD GRANT THE WIT OF CERTIORARI, IN THE CONSTITUTIONAL RIGHTS OF A JURY TRIAL OF CONFRONTATION OF THE SUPOENA ESTABLISH THE TRUE FACTS THAT THE SURVEYOR ORIGINALY IN 1940 WASTHE PROPER MAGNETIC MEETSBOUND BENCH MARKER POINT UNDEFIABLE ON LACHES IN TIME OVER 60 YEARS AGO,OF THE PROPER MEET AND BOUNDS AND JURY TRIAL EVIDENCE WOULD HAVE PROVED THE GRANT THE JUSTICE ONLY IN PREJUDICE DECLINING THE ISSUE OF"PRO-SE,"THE DEFENDANT HAD VIOLATED PROFESSIONAL CODE ETHICS OF CONSUMER PROTECTION"SET- OFF"WAS ILLEGAL WERE THE LAND PROPERTY WAS NEVER CONSUMED.**

*Respectfully Submitted*

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Dated September 16, 2003